

Transfers, Reassignments, and Temporary Details in Excess of 3 Months of Local National (LN) Employees in Germany – Management Authority to Unilaterally Direct Actions and Works Council Participation Rights

After enactment of the changed Protocol of Signature to the Supplementary Agreement (SA) to the NATO/SOFA on 29 Mar 98, depending on the circumstances of the individual case, the actions enumerated in the title are or may be subject to works council codetermination in accordance with Section 69, in conjunction with Section 75, paragraph 1, numbers 3 and 4, modified German Personnel Representation Law (GPRL).

In the past, these types of action were sometimes misunderstood by both management and the works councils, and frequently resulted in friction and confusion by both parties as well as concerned employees. Therefore, this is to clearly define these actions, list the spectrum of related potential personnel actions, and portray the different legal procedures involved. Generic and specific guidance is provided below. The term “agency” used in this context denotes the “works council agency” as defined by this headquarters under authority vested in paragraph 1 of the NATA/SOFA-SA to paragraph 9 re Article 56, reference 1a, in conjunction with the pertinent provisions of the GPRL.

Terms



[Transfer \(Versetzung\)](#). The indefinite assignment of an employee to another agency at the same or different duty station to perform duties of the same or similar nature, i.e., the duties owed by the employee by virtue of the existing employment contract.



[Reassignment \(Umsetzung\)](#). The indefinite assignment of an employee from one part to another part of the same agency at the same duty station to perform duties of the same or similar nature and the indefinite assignment of an employee from one part to another part of the same agency at a different duty station to perform duties of the same or similar nature (if new duty station is located more than 20 km from the municipality borders of the old duty station).



[Temporary Detail \(Abordnung\)](#). The temporary assignment of an employee to another agency at the same or at a different duty station, or to another location to perform duties of the same or similar nature. Contrary to employee transfers and indefinite reassignments, employee temporary details, which, as a rule, place the affected employee into a temporary duty travel (TDY) status, are only temporary in nature, and do not normally result in the permanent integration of the affected employees into “new” working environments.

The Collective Tariff Agreement (CTA II) does not contain provisions regulating transfers and reassignments. However, Article 56, paragraph 1d., NATO/SOFA-SA, permits such actions inasmuch as it explicitly stipulates that transfers of LN employees of the Sending States for duty reasons require the written consent of the individual affected employees. Hereby, the term “duty reasons” implies that compelling business reasons within the meaning of German Dismissal Protection Law (KSchG) are necessary to justify an employee transfer action. Therefore, actions under the merit promotion program where employees apply for position vacancies at their own or other agencies at the same or different duty stations, are selected and subsequently placed do not constitute transfers or reassignments in the meaning of the NATO/SOFA-SA and the GPRL. These actions are either promotions or appointments and as such subject to cooperation with the appropriate works council under the provisions of Section 72, in conjunction with Section 75, paragraph 1, numbers 1 and 2, reference 1b, GPRL. Since they are normally not taken for compelling business reasons, they are not covered in this handout.

Like transfers to other agencies, reassignments for duty reasons to other duty stations within the same agency as defined above, ultimately result in the permanent integration of the affected employees into “new” working environments. Consequently, both transfers to other agencies and reassignments within the same agency if connected with a change in duty station as defined, above, require the written consent of the affected employees.

Within the parameters of the GPRL, which will be addressed below, employee reassignments as defined above, and temporary details of less than 3 months duration may be unilaterally directed by management, do not require the written consent of the affected employees, and are not subject to works council participation of any kind except for temporary details of members of employee representation groups who enjoy special protection under the provisions of Section 47, GPRL, and Section 15, KSchG.

Transfers as well as reassignments as defined above, are subject to codetermination with the works council representing the concerned employee under Section 69, in conjunction with Section 75, paragraph 1, number 3, GPRL. In addition, employee transfers are subject to the cooperation procedure with the gaining works council under Section 72, in conjunction with Section 75, paragraph 1, number 1, GPRL. This is true even though the affected employees’ written consent is a mandatory prerequisite for the initiation of the respective action to begin with.

If the affected employees refuse their written consent to a transfer or reassignment as defined above, we may not simply initiate action to effect the respective employee’s ordinary termination but must adhere to the provisions of the KSchG and the CTA II. These legal provisions mandate the placement of affected, surplus employees in the order of their social retention standing into existing, suitable position vacancies within the commuting area for which they are qualified or could become qualified within a period of six months. Therefore, if an employee refuses to agree to a transfer or reassignment as defined, to a suitable position vacancy within the commuting area, action to effect an ordinary termination notice for change of employment conditions will

be initiated. Such actions must be cooperated with the appropriate losing and, in the case of transfers, gaining works councils in accordance with the provisions of Section 72, in conjunction with Section 79 and Section 75, paragraph 1, number 1, GPRL.

Temporary details for more than 3 months are also subject to codetermination with the appropriate works council under Section 75, paragraph 1, number 4, reference 1b. For employees holding offices in one of the above employee representations, details also require the prior approval of the appropriate works council(s) under Section 47, GPRL, regardless of the duration of the detail.

Because of the complexity of these personnel actions and the legal ramifications involved, all preliminary actions, in particular all interchanges between management and the affected employees, such as offers of transfer, continued employment with other agencies, reassignment, etc., will be made in writing. This is not only a mandatory requirement under the pertinent provisions of reference 1b, but inevitably essential to effectively support such actions in labor court if challenged by the affected employee(s).